

Supreme Court, U.S.S.
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JOSEPH F. SPANIOLO, JR.
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No.

**IN THE
SUPREME COURT
OF THE
UNITED STATES**

October Term, 1985

THE PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,
v.
YOUNIS MANSI ESSA,
Respondent.

**ON PETITION FROM A WRIT OF CERTIORARI TO
THE COURT OF APPEALS
OF THE STATE OF MICHIGAN**

**MEMORANDUM FOR YOUNIS MANSI ESSA
IN OPPOSITION**

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TABLE OF CONTENTS

CASES	Page
<i>Michigan v Clifford</i> , _____US_____, 104 S. Ct. 641, 78 L Ed 2d 477 (1984)	1, 2, 3

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Petitioner asks this Court to consider whether the Michigan Court of Appeals erred by ruling that the first, warrantless and non-consensual search of Respondent's home was lawful pursuant to *Michigan v Clifford* U.S. , 104 S. Ct. 641, 78 L Ed 2d 477 (1984). In *Clifford*, fire investigators arrived six hours subsequent to extinguishing a blaze, and searched the burned premises

after waiting for a work crew to pump water from the basement of the home. In a 4-1-4 decision, this Court held that the warrantless, non-consensual search violated the Fourth and Fourteenth Amendments of the United States Constitution. The *Powell* opinion (written for four justices), adhered to the view that after a fire is extinguished, as long as a reasonable expectation of privacy remains in the premises, any subsequent, non-consensual entry must be pursuant to either an administrative warrant (to investigate the cause and origin of the fire) or pursuant to a criminal warrant issued on probable cause (to investigate suspected criminal activity, i.e., arson). The *Powell* opinion also recognized that an exception to the warrant requirement would be the occurrence of a new exigent circumstance justifying warrantless entry (Petitioner does not claim, nor did there exist in this case, any new exigent circumstance justifying warrantless entry).

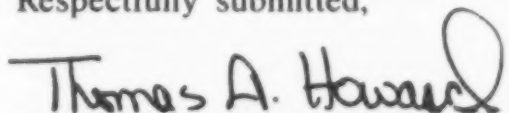
Justice Rehnquist, writing for four justices, held that no warrant is ever required for a post-fire search, so long as the search is conducted promptly and limited in scope to determining the cause of the fire. Significantly, the *Rehnquist* opinion noted that in some cases, fire inspectors might be required to notify the owner of the burned premises; remaining unclear, however, is when such notice would be required.

Justice Stevens wrote a separate opinion, concurring with the *Powell* opinion. A significant reason behind Justice Steven's failure to find the *Clifford* search a lawful one is "that the challenged entry was made by officers who had not been on the premises at the time of an earlier valid search." *Clifford*, L. Ed. 2d at 486. This fact applies equally in the present case. Even more compelling is the fact that the present case does not even involve a prior search, so that the issue of continuation versus new and independent entry does not exist. In this case, officers who were *not* present while the fire was being extinguished entered Respondent's home one and a half hours subsequent to the fire's extinguishment. Clearly, Justice Steven's opinion does not sanction a search of this nature.

Justice Stevens would require that, at the very minimum, reasonable attempts be made to give notice to a homeowner prior to entry onto the burned premises. In *Clifford*, Justice Stevens believed the failure to make a reasonable notification effort rendered the warrantless entry unlawful, even where the homeowner was out-of-town. Reasonable effort to give notice of a post-fire search is mandated by *Clifford*, where Respondent was not only in town, but had recently been observed at the scene of the fire by neighbors. The issue raised by Petitioner is one clearly resolved by the *Clifford* decision, correctly interpreted and applied herein by the Michigan Court of Appeals, and needing no further review of this Court.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

A handwritten signature in dark ink, reading "Thomas A. Howard". The signature is fluid and cursive, with a large loop at the end of the last name.

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Dated: May 1986

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